



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

**ADMINISTRATION OF DELINQUENT LOANS BY THE
PHOENIX AREA OFFICE,
BUREAU OF INDIAN AFFAIRS**

**REPORT NO. 96-I-1266
SEPTEMBER 1996**



United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL
Washington, D.C. 20240

OCT | 6 1996

MEMORANDUM

TO: The Secretary

FROM: Wilma A. Lewis
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information -
"Administration of Delinquent Loans by the Phoenix Area
Office, Bureau of Indian Affairs" (No. 96-I-1266)

Attached for your information is a copy of the subject final report. The objective of the audit was to determine whether the Bureau of Indian Affairs Phoenix Area Office adequately pursued amounts due on delinquent direct and assigned loans.

We concluded that the Area Office did not adequately administer delinquent loans. Specifically, the Area Office: (1) did not aggressively pursue the collection of delinquent loans; (2) did not adequately secure its interest in, appraise, and liquidate collateral for loans; and (3) canceled or waived interest on a direct loan without proper authority. As a result, the Area Office may have lost the opportunity to collect unpaid delinquent loan balances and collateral pledged as security for these loans. These deficiencies existed because required debt collection practices and collateral liquidation were not routinely performed, primarily because experienced Area Office credit staff retired and were not replaced.

The Bureau concurred with our recommendations regarding implementation of debt collection procedures but nonconcurred with our recommendations regarding collateral for guaranteed loans and renegotiation of a loan where interest was waived. We requested the Bureau to reconsider its responses to the recommendations with which it nonconcurred.

If you have any questions concerning this matter, please contact me at (202) 208-5745 or Mr. Robert J. Williams, Acting Assistant Inspector General for Audits, at (202) 208-4252.

Attachment



United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL
Washington, D.C. 20240

SEP 30 1996

AUDIT REPORT

Memorandum

To: Assistant Secretary for Indian Affairs

From: Robert J. Williams *Robert J. Williams*
Acting Assistant Inspector General for Audits

Subject: Audit Report on the Administration of Delinquent Loans by the
Phoenix Area Office, Bureau of Indian Affairs (NO. 96-I-1266)

INTRODUCTION

This report presents the results of our audit of the administration of delinquent loans by the Bureau of Indian Affairs Phoenix Area Office. The objective of the audit was to determine whether the Area Office adequately pursued amounts due on delinquent direct and assigned loans.

BACKGROUND

The Indian Reorganization Act of 1934 created an Indian revolving loan fund to serve the financing needs of individual Indians and tribes. On April 12, 1974, the Congress passed the Indian Financing Act of 1974 (Public Law 93-262, as amended) to promote economic development activities for individual Indians and Indian enterprises by providing funding that is not available from the private sector. Title I of the Act expanded the Indian revolving loan fund by authorizing additional funding for direct loans to individual Indians and Indian enterprises for many different economic development opportunities. However, the Congress eliminated funding for direct loans in fiscal year 1995. Title II of the Act established the Indian Loan Guaranty Fund for the purpose of guaranteeing loans made by financial institutions to individual Indians and Indian enterprises. The Bureau is authorized to approve and to guarantee up to 90 percent of an outstanding balance on these loans. Guaranteed loans in default become assigned loans when the Bureau pays the loan guaranty. The Bureau is then responsible for collecting assigned loan amounts from the borrowers who defaulted.

The Bureau's Office of Economic Development provides policy and guidance on the loan program to area and agency credit personnel and evaluates and monitors area and agency office programs. The program is administered through 12 area offices and many agencies nationwide. Area credit and finance personnel are responsible for monitoring daily activities of the loan program. Agency credit personnel are responsible for reviewing initial loan applications, with guidance, support, and assistance from area credit officers.

As of September 30, 1995, the Phoenix Area Office had 45 outstanding direct loans, with unpaid principal balances totaling \$13.5 million. Delinquencies existed on 20 of these loans, with unpaid principal balances totaling \$7.6 million. The Area Office also had three assigned loans, with unpaid balances totaling \$9.7 million. One of those loans was delinquent, with an unpaid principal balance of about \$7.1 million.

SCOPE OF AUDIT

We reviewed 30 direct loans and 3 assigned loans. Of the 33 loans reviewed, 17 direct loans, with unpaid principal of about \$7.6 million, and 1 assigned loan, with unpaid principal of about \$7.1 million, were delinquent at the time of our review.¹

This audit was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances to accomplish the audit objective.

The audit was performed during October 1995 through January 1996 at the Phoenix Area Office. As part of this audit, we evaluated the system of internal controls over loan program collection functions to the extent we considered necessary. The internal control weaknesses identified are discussed in the Results of Audit section of this report. If implemented, the recommendations should improve the internal controls.

We reviewed the Department of the Interior Annual Statement and Report, required by the Federal Managers' Financial Integrity Act, for fiscal year 1994. This report identified a material weakness in the Bureau's cash management and debt collection. Specifically, the weakness included inadequate, obsolete, outdated, or otherwise insufficient regulations, procedures, and guidelines to properly administer cash management operations and debt collection functions. In addition, the report was critical of the Bureau's accounting system because, according to the report, the system could not accommodate accounts receivable accounting, which was further adversely impacted by inadequate staffing. However, the report stated that the weaknesses relating to the improper filing of security documents and to the foreclosure and liquidation of collateral in a timely manner had been corrected. We

¹The three outstanding delinquent direct loans not reviewed totaled about \$26,000.

considered the impact of these reported material weaknesses during the conduct of our audit.

PRIOR AUDIT COVERAGE

Neither the Office of Inspector General nor the General Accounting Office has issued any audit reports within the past 5 years that addressed the Phoenix Area Office's collection of delinquent loans. However, the Office of Inspector General issued three audit reports, one on the Albuquerque Area Office and two on the Minneapolis Area Office, that addressed selected aspects of debt collection on loans as follows:

- The audit report titled "Business Enterprise Development, Albuquerque Area Office, Bureau of Indian Affairs" (No. 92-I-1195) was issued on August 27, 1992. The report stated that the Area Office: (1) made follow-on loans either to Indian enterprises that had defaulted on prior loans or to Indian enterprises whose businesses were incapable of generating sufficient profits to repay the loans; (2) had not secured available assets as collateral to offset any future direct loan losses; and (3) did not aggressively pursue delinquent loan payments.

- The audit report titled "Selected Loans Related to the Guaranteed Loan Program, Minneapolis Area Office, Bureau of Indian Affairs" (No. 92-I-1289) was issued on September 12, 1992. The report stated that the Bureau had not secured or maintained sufficient collateral for two assigned loans.

- The audit report titled "Business Enterprise Development, Minneapolis Area Office, Bureau of Indian Affairs" (No. 93-I-794) was issued on March 29, 1993. The report stated that the Bureau: (1) wrote off delinquent loans to Indian tribes that had the economic resources to pay the loans; (2) did not secure collateral and did not foreclose and liquidate collateral in a timely manner; and (3) did not aggressively pursue the collection of delinquent loans.

RESULTS OF AUDIT

The Phoenix Area Office did not adequately administer delinquent loans. Specifically, we found that the Area Office: (1) did not aggressively pursue the collection of delinquent loans; (2) did not adequately secure its interest in, appraise, and liquidate collateral for loans; and (3) canceled or waived interest on a direct loan without proper authority. Prescribed debt collection procedures are detailed in the Code of Federal Regulations (Title 25), the Treasury Financial Manual and accompanying guidelines, and the Departmental Manual. However, required debt collection practices and collateral liquidation were not routinely performed primarily because experienced Area Office credit staff retired and were not replaced. As a result, the Area Office may have lost the opportunity to collect unpaid delinquent loan balances and collateral pledged as security for these loans.

Debt Collection

The Area Office did not aggressively attempt to collect delinquent loans. Specifically, for the 18 delinquent loans reviewed, we found that the Area Office did not pursue collection of the loans beyond issuing letters demanding payment. As a result, the Area Office may have jeopardized the collection of \$7.6 million for delinquent direct loans and \$7.1 million for a delinquent assigned loan as of September 30, 1995.

The Department of the Treasury Asset Management Manual, Volume 1, Chapter 4, and the Departmental Manual (344 DM 10) set forth the procedures that a Federal agency is to follow to assist in the collection of delinquent debts as follows: (1) issuing three progressively stronger letters at specified intervals demanding payment; (2) reporting the delinquency to a credit bureau; (3) obtaining administrative salary and tax refund offsets as applicable; (4) referring delinquent debts to collection agencies; (5) referring delinquent debts to the Department of the Interior's Office of the Solicitor and to the Department of Justice as applicable; and (6) liquidating collateral. In addition to Treasury's procedures, the Office of the Solicitor has determined that all financial resources of the borrower need to be considered in order to determine whether collection action is feasible.

Our review disclosed that demand letters were generally issued for the delinquent loans. However, we found that the Area Office had not complied with any of the other debt collection procedures recommended by the Treasury. We also noted two instances in which tribes that were delinquent on loan payments had other assets that could have been pursued to liquidate the delinquent debt. In one instance, a tribe had delinquent debt of approximately \$824,000 and an unreserved, undesignated fund equity of \$13.2 million. In the other instance, a tribe had accumulated net earnings of \$2.7 million generated by an enterprise that had \$2.2 million in delinquent debt. We believe that the Area Office should pursue collection of the delinquent loans from these resources.

Collateral

The Area Office did not always secure its interests in collateral pledged for loans, did not always appraise the pledged collateral to ensure that it was adequate to protect the Bureau's interests in case the borrower defaulted, and did not liquidate collateral when loans became delinquent. Our review disclosed 11 loans for which collateral was not adequately secured and 10 loans for which collateral was not appraised. We found no instances where the Area Office attempted to liquidate the collateral after these loans became delinquent. Also, our review disclosed one instance where collateral in the possession of the Area Office was released to the borrower, even though the loan was delinquent.

The Code of Federal Regulations (25 CFR 101.13(i)) requires that security documents or financing statements be filed or recorded in accordance with applicable

state or Federal laws except for those customarily filed in Bureau offices. According to the Code, if a borrower does not comply with the loan agreement, the Bureau may take possession of all collateral given as security and liquidate the collateral if necessary (25 CFR 101.15).

The Area Office did not adequately manage the collateral of tribal enterprises that went out of business. For example:

In February 1991, a \$50,000 direct loan was made to an individual for the operation of a store on the Papago Indian Reservation. The borrower pledged land and an automobile as collateral for this loan. However, the Area Office never filed the security documents needed to establish a right to the collateral in case of default. The borrower, unable to make the required loan repayments, informed the Papago Agency Office in October 1992 that he was filing for bankruptcy. In February 1993, the bankruptcy judge released the borrower from all dischargeable debts. Because the Area Office did not secure its interest in the collateral, it could not liquidate the collateral to collect the unpaid loan principal of about \$42,000.

In March 1992, a direct loan of over \$1.5 million was made to a tribal enterprise to purchase additional cattle and to expand cropland to improve an existing feedlot operation. For collateral, the tribe pledged income from selected trust lands and all livestock, equipment, and fixtures located on these lands. Financing statements were filed by the Western Nevada Agency Office to secure the Bureau's position in this collateral. However, the Area Office did not appraise the collateral when it was pledged to determine whether it was adequate to cover the loan amount in case of default. The tribe made loan payments until May 1994, when the unpaid loan principal was about \$1.4 million. In April 1994, the Area Office directed that the feedlot be appraised. The appraised value was \$360,000, which was significantly lower than the unpaid loan principal. The Area Office did not attempt to foreclose on the collateral. At the December 1995 exit conference, the Area Director estimated the value of the available collateral to be less than \$70,000.

In January 1989, a direct loan of \$100,000 was made to an individual for a home construction business. The Area Office increased the loan amount to \$350,000 and \$505,000 in December 1989 and June 1992, respectively, even though the borrower never made a payment against the principal. As collateral for the loan, all of which was adequately secured by the Area Office, the borrower pledged a total of 5 acres of allotted lands within the Salt River Pima-Maricopa Indian Community. The Area Office did not appraise the land when the collateral was pledged. In September 1994, the Area Office requested an appraisal of the land. The appraisal estimated the land at \$115,500, or \$389,500 less than the unpaid principal of the loan.

In August 1988, a direct loan of \$600,000 was made to a partnership that had majority ownership by a tribal enterprise to manufacture machine parts and electrical wire harnesses. In June 1990, the loan was increased by \$500,000. Collateral pledged, which was secured by the Area Office, included equipment purchased with

loan proceeds and other enterprise equipment. When the loan was increased, the Area Office required additional collateral and the tribe pledged a special deposit account of approximately \$619,000, which was jointly controlled by the tribe and the Uintah and Ouray Agency Office. The tribe also pledged royalties from an oil and gas lease of approximately \$2,850 per month. However, the Area Office permitted the tribe to use these royalties rather than to escrow them until the loan was repaid.

The tribe subsequently had cash flow problems, which caused the Agency Office to make some of the loan payments from the special deposit account. Because of these problems, the tribe asked that the special deposit account be released and the loan be restructured. The loan, with an unpaid principal of about \$820,000, was restructured in July 1994, which deferred the next loan payment until July 1995. In August 1994, the Area Office released the special deposit account with a balance of \$586,000 and allowed the tribe to substitute, as collateral, income to be generated from timber sales beginning in 1994 through 1998. At the time of our review, no timber sales had occurred, and the tribe had not made the July 1995 loan payment of \$199,000. Since the special deposit account had been released and the royalty income had been expended, there was no collateral readily available for the Area Office to pursue to cover the delinquent loan payment.

Interest Cancellation and Waiver

The Area Office improperly canceled about \$1.9 million in accrued interest and waived about \$1.5 million in future interest on a loan to the Fort Mojave Tribe for its farming operation. The Code of Federal Regulations (25 CFR 101.11) requires that interest be charged on direct loans at a rate determined by the Secretary of the Treasury. Further, the Departmental Manual (Parts 209 and 230) states that Area Directors may not cancel or waive interest on Bureau loans.

In the late 1970s, direct loans totaling about \$3.2 million were made to the Tribe for its farming operation. However, because of the Tribe's financial difficulties, the loans were restructured in May 1983, which resulted in payments being deferred except for interest until 1996. In addition, a separate non-interest-bearing note was executed for about \$1.5 million to cover all accrued interest on the original loan through December 31, 1984, with repayment to begin in 1986. These restructuring actions were approved by the Deputy Assistant Secretary for Indian Affairs.

The financial prospects of the farming operation did not improve, and in September 1987, the loan was again restructured (Modification 4) by canceling all accrued interest through February 19, 1987, which amounted to about \$1.9 million, and by approving a non-interest-bearing promissory note for the remaining unpaid principal of \$3,060,000. The restructuring, which was approved by the Area Director, stipulated that repayment be renegotiated again before January 1, 1993. In January 1992, when the loan principal had been paid down to \$2,660,000, the loan was again restructured (Modification 5) and a new promissory note was executed that waived interest (estimated to be about \$1.5 million) until January 1997, when the remaining

unpaid principal would accrue interest at 6 percent. These actions were also approved by the Area Director.

However, our review of the Tribe's audited and unaudited financial statements for 1990 through 1994 noted that the farming operation had become a profitable venture, with accumulated retained earnings in excess of \$2.7 million at December 31, 1994. Therefore, we concluded not only that interest totaling about \$3.4 million was canceled and waived without proper authority but also that these actions were unwarranted based upon the financial position of the Tribe's farming operation.

Area Office Staffing

During fiscal years 1994 and 1995, two experienced area credit office personnel retired, leaving one individual responsible for making and servicing loans and for collecting debts. At the time of our audit, the two positions had not been filled. However, we also noted that the work load in the credit program will decline because the Congress eliminated funding for the direct loan program starting in fiscal year 1995. We believe that if the current staff places emphasis on monitoring current loans, pursuing delinquent loans, and implementing existing debt collection procedures, the Phoenix Area credit program will be more effective.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs ensure that the Phoenix Area Office:

1. Implements debt collection procedures required by the Code of Federal Regulations, the Treasury Financial Manual, and the Departmental Manual.
2. Obtains access to other assets to liquidate delinquent loan debt in those cases where borrowers have sufficient financial resources to pay their debt obligations.
3. Adequately secures all collateral pledged on loans and maintains the Bureau's position to that collateral until the loan is fully liquidated.
4. Requires that all collateral be appraised and that collateral be of sufficient value to cover the unpaid loan balance in case the borrower defaults.
5. Liquidates collateral for delinquent unpaid loans when other collection efforts have not been effective.
6. Complies with proper delegations of authority when regulations are waived.
7. Renegotiates the repayment provisions of the loan for the Fort Mojave Tribe's farming operation to require the payment of interest.

Bureau of Indian Affairs Response and Office of Inspector General Reply

The July 16, 1996, response (Appendix 2) to the draft report from the Acting Assistant Secretary for Indian Affairs expressed concurrence with Recommendations 1, 3, and 6; partial concurrence with Recommendations 2, 4, and 5; and nonconcurrence with Recommendation 7. Based on the response, we consider Recommendations 1, 3, and 6 resolved and implemented; Recommendation 5 resolved but not implemented; and Recommendations 2, 4, and 7 unresolved. Accordingly, the unimplemented recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation, and the Bureau is requested to reconsider the unresolved recommendations (see Appendix 3).

Recommendation 2. Partial concurrence.

Bureau Response. The Bureau stated that it has access only to assets that were pledged as collateral in loan agreements. The Bureau further stated that it “no longer has authority” over tribal or individual Indian trust funds because responsibility for these funds has been transferred to the Office of Special Trustee. The Bureau said, however, that the Phoenix Area Office was working with the Field Solicitor and the Office of Special Trustee in an attempt to use Individual Indian Money accounts of the Tribe to repay the delinquent loan.

Office of Inspector General Reply. We acknowledge that the Bureau’s actions are limited with respect to trust funds; however, we do not agree that the Bureau has access only to assets that were pledged as collateral in the loan agreements. In a December 29, 1989, memorandum to the Area Director, Minneapolis Area Office, Bureau of Indian Affairs, the Office of the Field Solicitor stated, in reference to loan debt collection, that “the Secretary must examine the financial condition of the debtor.” The Field Solicitor further stated, “It [cancellation of loan indebtedness] should be based on a factual determination of the financial capability of the debtor.” Accordingly, the Bureau should consider all of the financial resources of a borrower when it pursues the collection of delinquent loans.

Recommendation 4. Partial concurrence.

Bureau Response. The response stated that collateral was applicable only to direct loans and that fiscal year 1995 was the last year in which the Bureau received funding for direct loans.

Office of Inspector General Reply. We disagree that collateral applies only to direct loans. Collateral is also applicable to guaranteed loans. The Code of Federal Regulations (25 CFR 103.27) requires lenders of guaranteed loans to obtain security (collateral) if it is available from borrowers to protect the loan without consideration of the guarantee. The Code (25 CFR 103.36) further states that the lender is to

subrogate its rights and assign the security for the loan to the Government upon reimbursement for the guaranteed portion of the loan. Therefore, the Bureau should ensure that collateral for guaranteed loans is also adequately appraised and adequately secured.

Recommendation 6. Concurrence.

Bureau Response. Although the Bureau concurred with this recommendation, it noted that on April 4, 1986, memorandum from the Acting Deputy to the Assistant Secretary for Indian Affairs (Operations) to the Phoenix Area Director (Attachment 3 to the Bureau's response) "delegated to the Phoenix Area Director the authority to waive regulations and negotiate loan modification No. 4, which waived previously owed interest and put the principal into a non-interest bearing loan."

Office of Inspector General Reply. We do not believe that the April 4 memorandum delegated authority to the Phoenix Area Director to waive interest related to this loan. The memorandum specified that the delegation of authority was limited to: (1) approving the farm's revised plan of operation and management contract; (2) subordinating loan security; and (3) postponing a loan payment that was due on January 1, 1986. The memorandum also stated, "If it becomes necessary to further modify this loan, please advise."

Recommendation 7. Nonconcurrence.

Bureau Response. The Bureau nonconcurred with this recommendation, stating that the tribal farming operation had a "history of financial difficulties" and that restructuring the loan "allowed the enterprise to recover and become a profitable enterprise."

Office of Inspector General Reply. The Bureau's actions on this loan have resulted in all interest being canceled or waived from the loan's inception in 1976 through 1996, a period of about 20 years. These actions were accomplished through numerous restructurings of the loan, the most recent of which occurred in 1992, when interest was waived through December 1996. We do not consider these actions to be a prudent business practice because the tribal farming enterprise has reported increased annual profits since 1990. Therefore, this enterprise has had and continues to have the financial resources to pay interest on the loan.

General Comments on Audit Report

The Bureau also stated that it was aware of the problems in the loan program of the Phoenix Area Office and that it initiated corrective actions before commencement of the audit. The Bureau further stated that its Office of Economic Development reviewed the Phoenix Area Office's delinquent loan portfolios and issued a report in May 1995 that contained "many of the findings" that were in our audit report and

that made recommendations to improve the Area Office's management of the delinquent loan program.

Although the Bureau stated that the report was distributed to each area office, we found that the problems related to delinquent loans continued to exist at the Phoenix Area Office and that none of the six recommendations in the May 1995 report had been implemented at the time our fieldwork was completed in December 1995.

In accordance with the Departmental Manual (360 DM 5.3), we are requesting a written response to this report by December 6, 1996. The response should provide the information requested in Appendix 3.

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

We appreciate the cooperation of Bureau personnel in the conduct of our audit.

CLASSIFICATION OF MONETARY AMOUNTS

| <u>Finding Area</u> | <u>Funds To Be Put To Better Use</u> |
|---------------------|--|
| Interest Waiver | \$3.4 million |



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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JUL 16 1996

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Memorandum

To: Assistant Inspector General for Audits

From: **For** Ada E. Deer *Michael Anderson*
Assistant Secretary - Indian Affairs

Subject: OIG Draft Audit Report, "Administration of Delinquent Loans by the Phoenix Area Office, Bureau of Indian Affairs" (C-IN-BIA-002-96)

The subject audit report addresses the adequacy of delinquent loan administration in the Bureau's Phoenix Area Office. The Bureau was aware of the problems in the loan program identified by the Office of Inspector General (OIG) and also knew that problems existed in several other Area Offices. Corrective actions were initiated bureau-wide before commencement of the subject audit, and the Office of Economic Development (OED) has been coordinating these efforts.

Prior to the issuance of the subject draft audit report, the OED took the following actions to improve program and collateral management:

- 1) Guaranty ceiling allocations for Fiscal Year 1995 were made only to those Areas which demonstrated delinquency rates under 50 percent in their assigned guaranteed loan portfolio and their direct loan portfolio. In December 1995, a temporary loan guaranty ceiling moratorium for Fiscal Year 1996 was imposed on 11 of the 12 Area Offices because serious delinquency problems still existed. This moratorium was lifted on June 5, 1996.
- 2) The Bureau began reviewing all Area Office delinquent loan portfolios in April 1994 and concluded the reviews in August 1995. In May 1995, the OED issued a report on Phoenix Area's delinquent loan portfolio. Many of the findings in the subject OIG draft audit report were also contained in these review reports. Each Area Office received a report that contained facts, findings, and recommendations for improved management of the delinquent loan program.
- 3) In August 1995, the U. S. Department of the Treasury's Asset Management Manual, Volume 1, "Managing Federal Receivables," was distributed to all Area Offices and they were directed to use this as the Bureau's official guide in collection of delinquent debts.

Responses to Report Recommendations:

Recommendation No. 1: Implement debt collection procedures required by the Code of Federal Regulations, the Treasury Financial Manual, and the Departmental Manual.

Response: The Bureau concurs. The Phoenix Area Office reports that they are following the Code of Federal Regulations (CFR) and the Treasury Financial Manual (TFM). Meeting the requirements of the TFM will also meet the requirements of the Departmental Manual. The Bureau is currently negotiating a Memorandum of Understanding with the Department of Treasury for debt collection management services.

It is acknowledged in the report that the findings are a direct result of the retirement of experienced Area Office credit staff who were not replaced. Filling the Area Credit Officer position was hindered by the Reduction-in-Force and the subsequent hiring freeze because of delays in appropriations. The Phoenix Area plans to advertise the position in July 1996 with selection scheduled for September 1996. Filling this critical position will provide adequate staff to ensure that Treasury and Departmental guidance continue to be followed. We consider this recommendation implemented.

Recommendation No. 2: Obtain access to other assets to liquidate delinquent loan debt in those cases where borrowers have sufficient financial resources to pay their debt obligations.

Response: The Bureau partially concurs. Generally, the Bureau can obtain access only to assets pledged as collateral in the loan agreement. The Phoenix Area Office is currently working with the Field Solicitor and the Office of Special Trustee in an attempt to use Individual Indian Money accounts of the Tribe to repay the delinquent loan (Attachments 1 and 2). As indicated in the draft letter from the Special Trustee, the Bureau of Indian Affairs no longer has authority over any tribal or individual Indian trust finds, as these functions have been transferred to the Special Trustee. In requesting that the Special Trustee release the funds, the Bureau has done all that is within its authority in this matter. We, therefore, consider this recommendation resolved and implemented. Any recommendations for further action which involve the use of trust funds should be directed to the Office of the Special Trustee.

Recommendation No. 3: Adequately secure all collateral pledged on loans and maintain the Bureau's position to that collateral until the loan is fully liquidated.

Response: The Bureau concurs. The Phoenix Area reports that staff can ensure security filings are current for all direct loans administered by the Phoenix Area Office. This audit finding related to a loan to an individual which was made at the same time the Bureau transferred responsibility for the credit program to the tribe under a P.L. 93-638 contract. The oversight in failing to secure the collateral occurred during the transition period. The borrower has since filed for bankruptcy and all debts were discharged by the courts. Training has been provided to the tribal staff, and they understand the requirement for securing collateral. We consider this recommendation to be implemented.

Recommendation No. 4: Require that all collateral be appraised and that collateral be of sufficient value to cover the unpaid loan balance in case the borrower defaults.

Response: The Bureau partially concurs. Collateral is only an issue for the Bureau on direct loans, and Fiscal Year 1995 was the last year finding was provided for new direct loans. Exceptions to collateral requirements are contained in 25 CFR 101.13(a) which states that "... lack of security will not preclude the making of a loan.. .".

For existing loans, appraisal of the collateral would have occurred at the time of loan application, and additional collateral can be added only with the concurrence of the borrower. We will continue to ensure that security filings are updated and collateral inspections conducted for existing direct loans until they are paid in full.

For delinquent loans, the Bureau could negotiate with the borrower to provide additional collateral to cover the unpaid loan balance. The borrower, however, may be unwilling to renegotiate because it would be financially beneficial to default or because there are no additional assets to pledge.

We consider this recommendation implemented.

Recommendation No. 5: Liquidate collateral for delinquent unpaid loans when other collection efforts have not been effective.

Response: The Bureau partially concurs. If a borrower has only one loan, we concur that collateral should be liquidated when other collection efforts are not successful. If a borrower has more than one loan, however, we need to consider the impact liquidating collateral might have on the continuing operation of enterprises operated under other loans.

The May 1995 OED review report on the Phoenix Area Credit Office recommended that the Area Director conduct collateral inspections on all delinquent loans. Collateral inspections have been completed on four delinquent loans, appraisals of collateral have been completed on three delinquent loans, and collateral was liquidated for one loan. The Phoenix Area is continuing to make progress on reviews of the remaining delinquent loans.

Under the Memorandum of Understanding, Treasury will also be able to liquidate collateral on delinquent loans.

| | |
|-------------------------------|-----------------------|
| Responsible Person: | Phoenix Area Director |
| Estimated Date of Completion: | December 31, 1996 |

Recommendation No. 6: Comply with proper delegations of authority when regulations are waived.

Response: The Bureau concurs. This recommendation resulted from the interest waivers granted by the Phoenix Area Director to the Fort Mojave Tribe.

On April 4, 1986, the Deputy to the Assistant Secretary - Indian Affairs(Operations) delegated to the Phoenix Area Director the authority to waive regulations and negotiate loan modification No. 4, which waived previously owed interest and put the principal into a non-interest bearing loan (Attachment 3). The Phoenix Area was aware that delegation of authority was required for Modification No. 5, however, they believed that the delegation had been granted.

We consider this recommendation to be implemented.

Recommendation No. 7: Renegotiate the repayment provisions of the loan for the Fort Mojave Tribe's farming operation to require the payment of interest.

Response: The Bureau does not concur. The tribal farming operation had a history of financial difficulties. The restructuring of the loan allowed the enterprise to recover and become a profitable enterprise. Modification No. 5 already requires the Tribe to begin paying interest in January 1997.

Attachments

ATTACHMENT 1

APR - 8 1996

Acting

Phoenix Area Director

Delinquent Loan No. D922D1H6101

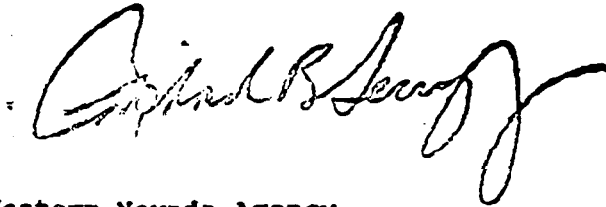
Acting Deputy Director, Office of Trust Funds Management

We received the attached request from the Western Nevada Agency (WNA) dated March 15, 1996 concerning the subject loan which requires coordination with your office. The WNA requested we contact the Field Solicitor for advice on applying a Right-of-Way (ROW) payment of \$122,000 toward repayment of a delinquent loan.

We understand that normally the payment was deposited in a tribal Individual Indian Money (IIM) account. According to the Solicitor of the Phoenix Field Office, 25 CFR §115.9, authorizes the Secretary or authorized representative to apply funds from an IIM account against delinquent claims of indebtedness to the United States. 25 CFR §115.10 prescribes procedures relative to §115.9.

However, with the implementation of the American Indian Trust Funds Management Reform Act of 1994 (Act), the Director, Office of Special Trustee (OST) now has trust fund authority. Per telephone conversation with you on April 2, 1996, you verbally instructed the BIA to deposit the funds in a Special Deposit (Tribal Escrow) account. We now request that you apply the \$122,000 against the delinquent loan as authorized by 25 CFR §115.9. We will forward to you background information on the delinquent loan.

Should you have any other questions, please contact Agatha Tsosie, Branch of Credit and Financing, at (602) 379-6624.



Attachment

cc: Superintendent, Western Nevada Agency

ATTACHMENT 2

Dear Chairman Hoferer:

Recently this office was requested by the Area Director of the Phoenix Area Office to place restrictions on approximately \$122,000.00 in tribal funds pursuant to the regulations at 25 CFR § 115.9. Section 115.9 authorizes the Secretary to apply funds held in IIM accounts to debts owed to the United States. The Walker River Paiute Tribe is in default on a BIA guaranteed loan and the Area Director wanted to use § 115.9 to partially liquidate that debt. Prior to February 9, 1996, the restrictions on the Tribe's account could have been imposed by either the Superintendent of the Western Nevada Agency or the Phoenix Area Director. However, on February 9, 1996, in Secretarial Order No. 3197, the Secretary terminated the BIA's authority over the Office of Trust Funds Management and transferred the program to the Office of Special Trustee. Thus, the only office that now has authority to implement the regulations at § 115.9 is the Office of Special Trustee. Accordingly, the Area Director directed his request to place restrictions on the Tribe's IIM account to this office.

IIM stands for "Individual Indian Money". Despite the fact that the regulations on their face seem to apply only to accounts for individuals, the BIA has had a long practice of allowing tribes to maintain IIM accounts. The Area Director's position is essentially that if tribes have IIM accounts, then they are subject to the IIM regulations. We are requesting a Solicitor's opinion on this matter. In addition, the Office of Special Trustee may have to reconsider whether as a matter of policy tribes should continue to be able to use the IIM system and, if so, what procedures should apply to tribal IIM accounts. Until these matters are reviewed and resolved, we have moved the Tribe's funds from its IIM account into a special interest bearing account and have denied, at least temporarily, the Area Director's request to apply these funds to the Tribe's delinquent BIA loan. While we have denied the Area Director's request to apply the funds to the delinquent loan, the effect of our action is to also deny access to the funds by the Tribe.

The Tribe can either wait until the Office of Special Trustee and the Solicitor's Office have resolved this matter, or it can appeal our decision to the Interior Board of Indian Appeals pursuant to the regulations at 25 CFR Part 2 and 43 CFR Part 4.310.





DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

RECEIVED
COLORADO RIVER AGENCY
APR 11 A D 17
PARKER, ARIZONA

APR 4 1986

Memorandum

To: Phoenix Area Director
From: **ACTING** Deputy to the Assistant Secretary - Indian Affairs (Operations)
Subject: Delegation of Authority - Fort Mojave Tribal Farm Plan of Operations

Pursuant to your January 14 request, we hereby delegate authority to approve the Fort Mojave Tribal Farm's revised plan of operation and management contract. These revisions enable a five member board instead of the tribal council to administer the farm operation. We understand that the farmer who was leasing the tribal farm has left and the board will be running the farm through an experienced manager.

The tribe proposes that the loan payment due January 1 be delayed to no later than December 1986. In addition, the tribe requested that the Bureau subordinate its security position on 1,854 acres of farm land contained in lease No. 7767 for a period not to exceed 18 years. We also hereby delegate authority for the Phoenix Area Office to decide on this subordination and loan modification. If it becomes necessary to further modify this loan, please advise.

The farm will use the security interest in lease No. 7767 as collateral for a \$520,000 crop loan from the Arizona Farmers Production Credit Association. This loan will enable the Tribe to plant a cotton crop, develop their economic base, provide tribal income, increase tribal employment, and protect the tribal resources.

Please provide Central Office copies of the amended plan of operation and the approved management contract as well as subordination and modification documents.

/S/ Ronald E. Esquerre

cc: Superintendent, Colorado River Agency

STATUS OF AUDIT REPORT RECOMMENDATIONS

| Finding/Recommendation Reference | Status | Action Required |
|-------------------------------------|---------------------------|--|
| 1, 3 , and 6 | Implemented | No further action is required. |
| 5 | Resolved; not Implemented | No further response to the Office of Inspector General is required. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. |
| 2, 4, and 7 | Unresolved | Reconsider each recommendation, and provide action plans that include target dates and titles of officials responsible for implementation. |

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